

No. 11,589

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

VINCENT BRUNO,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE.

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JURISDICTIONAL STATEMENT.

This is an appeal from the judgment of conviction (Tr. 9-10) of the District Court of the United States for the Northern District of California, Southern Division, convicting the defendant, after a jury trial, of a violation of the Harrison Narcotic Act (26 U.S.C. 2553 and 2557) and the Jones-Miller Act (21 U.S.C. 174). The indictment alleged in the first count that the defendant, on or about the 20th day of August, 1945, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a quantity of a derivative and preparation of morphine, to-wit, a bindle of heroin.

In the second count, the indictment alleged that at the time and place mentioned in the first count, the

defendant fraudulently and knowingly did conceal and facilitate the concealment of the same heroin, which had been imported into the United States of America contrary to law, as said defendant then and there knew. (Tr. 2-3.)

The Court below had jurisdiction under the provisions of Title 28 U.S.C., Section 41, Subdivision 2. The jurisdiction of this Honorable Court is invoked under the provisions of Title 28 U.S.C., Section 225, Subdivisions (a) and (d).

STATEMENT OF FACTS.

On the evening of August 20, 1945, Federal Narcotic Agent Grady and Special Employee Lieberman drove in a Government automobile to the corner of Bush and Larkin Streets in San Francisco. Agent Grady searched Lieberman, found that he had no narcotics on his person and gave him two \$50.00 bills, marked so they could be identified. Lieberman, under the observation of Agent Grady, walked to the Star Dust Bar at the corner of Larkin and Sutter Streets and entered. (Supp. Tr. 27-31 and 44-45.)

Upon entering the bar, Lieberman met the defendant and the following events transpired:

(Lieberman) "When I met him, Bruno told me that he was expecting me. He told me to follow him, and I followed him. We went to the rear of the bar and we turned right and we opened up the door. We went into a men's washroom over there. He went

ahead and gave me a bindle of Heroin. I told him I wanted two. He said, 'No, I thought you said, according to the telephone conversation, I thought it was only one.'

'So then he told me, 'If you want to wait about a half an hour I will give you the two of them.'

'I said, 'No, I have to go back to my hotel.'

'I asked him what he gets for the bindles. He said \$50. I had two \$50 bills in my possession which I received from Agent Grady. I gave him the \$50 and I told him I would see him later at the hotel. But we then walked out together, right out the entrance to the bar, right into the street. I looked up and down. I told him 'I am going to look around for a cab to go back to the hotel.''' (Supp. Tr. 45-46.)

After the purchase, Lieberman met Agent Grady at a prearranged location in the vicinity, where he turned over the bindle of heroin and one of the \$50 bills. (Supp. Tr. 29-31 and 46.)

The appellant, while admitting that he met Lieberman in the bar on that night, denied that he sold him narcotics. (Supp. Tr. 60-63.)

QUESTION.

Do the facts as established prove two separate offenses or only one?

ARGUMENT.

The appellant does not deny that the indictment states two separate offenses nor that the two offenses, i.e., sale and concealment, may arise out of one transaction. (Appellant's Brief p. 7.) He argues, however, that the evidence was not sufficient to *prove* the two offenses because the only proof of concealment was that raised by the presumption, under the statute (21 U.S.C. 174)¹, and that this possession was only a possession incident to the sale.

The facts in the instant case are practically identical with the facts in *Silverman v. United States*, 59 F. (2d) 636, certiorari denied, 287 U. S. 640, and in the recent case of *Sorrentino v. United States* (C.C.A.-9 No. 11,533), decided by this Honorable Court on September 4, 1947.

In the latter case the defendant entered a house and sold a can of opium to a Government agent; in this case the defendant entered a wash-room and sold a bindle of heroin to a Government Agent. In each case the only proof of concealment was the presumption arising from the possession and the possession was only for the purposes of the sale. Upon the same facts this Court held: "The two counts charged two distinct offenses. Both were amply proved."

¹"* * * Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

CONCLUSION.

For the reasons stated, we respectfully submit that the decision of the lower Court should be affirmed.

Dated, San Francisco, California,
September 22, 1947.

Respectfully submitted,

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